

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA, WESTERN DIVISION**

**IN RE: DERICK MORRING BEEM,
a/k/a DEREK BEEM**

DEBTOR.

)
)
)
) **CASE NO: 14-71833**
)

**MOTION TO APPROVE COMPROMISE PURSUANT TO RULE 9019 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

COMES NOW the Debtor, Derick Morring Beem (also known as “Derek Beem”) and John Newcomb, M.D. (individually), West Alabama Emergency Physicians, P.C., and Nouveau Solutions, LLC (collectively referred to hereinafter as “Newcomb”), and move (this "Motion") the Court, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, for entry of an order approving a settlement by and between the Debtor and Newcomb. In support of this Motion, the Parties respectfully aver as follows:

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2).

2. Rule 9019 of the Federal Rules of Bankruptcy Procedure provides the basis for the relief requested herein.

3. Debtor filed a voluntary petition for relief under chapter 13 of the United States Bankruptcy Code on October 20, 2014 (the "Petition Date").

4. Debtor listed a claim of \$100,000 against West Alabama Emergency Physicians, P.C. for vacation and back pay on Schedule B of his Petition.

5. Nouveau Solutions, LLC filed Proof of Claim #15 seeking contribution related to a claim made by the Department of Justice.

6. West Alabama Emergency Physicians, PC filed Proof of Claim #14 seeking contribution related to a claim made by the Department of Justice.

7. John Newcomb filed Proof of Claim #13 seeking contribution related to a claim made by the Department of Justice.

8. While any obligation to the Department of Justice is denied, it is believed that the contribution claims made by Newcomb against Debtor would exceed \$100,000.

9. The Parties have settled all claims related to each other. The Mediated Settlement Agreement containing the terms of the settlement is attached hereto as "Exhibit A".

10. The Parties have provided actual notice of the terms of this Motion and the relief requested herein to all appearing on the matrix of creditors in the Debtors' bankruptcy case including the Bankruptcy Administrator.

11. Rule 9019 of the Bankruptcy Rules provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). In determining whether or not to approve a settlement, the proper focus of the court's inquiry should be on whether or not the proposed settlement is fair and equitable under the circumstances of the case. *In re Aloha Foundation, Inc.*, 257 B.R. 83, 87-88 (Bankr. N.D. Ala. 2000).

12. In evaluating whether a proposed settlement is fair and equitable and in the best interests of the estate, courts consider the following factors:

- (a) The probability of success in the litigation;
- (b) The difficulties, if any, to be encountered in collecting any judgments that might be rendered;
- (c) The complexity of the litigation involved, as well as the expense, inconvenience and delay necessarily attendant to the litigation; and
- (d) The paramount interest of creditors with proper deference to their reasonable views.

Id. at 88, citing *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990).

13. The proposed settlement satisfies the aforementioned factors. Litigation of the Proofs of Claim and/or the claim by Debtor would be costly and time consuming. Furthermore, protracted litigation does not guaranty that as much money will be available to pay creditors of the bankruptcy estate. However, the proposed settlement, if approved, will cause all of the Proofs of Claims filed by Newcomb to be withdrawn, providing a substantial benefit to the Debtor's estate. Further, because the payment by the Debtor will not be made until six (6) months after he receives his discharge, the payment does not prejudice any other creditor. Moreover, the member interest in Nouveau Solutions, LLC, referenced in the settlement is of no value to the Estate, as Nouveau Solutions, LLC has also filed a Chapter 7 bankruptcy petition.

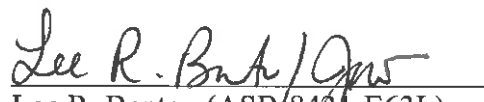
14. Based on the foregoing, the Debtor, in the exercise of his business judgment has determined that the proposed settlement is fair and reasonable and is in the best interests of the bankruptcy estate and its creditors. Newcomb, West Alabama Emergency Physicians, P.C. and

Nouveau Solutions, LLC join in with the Debtor in asking this Court to approve the proposed settlement.

WHEREFORE, PREMISES CONSIDERED, Parties respectfully request that this Court (1) grant this Motion and allow the Debtor to execute all documents necessary to consummate the proposed settlement; (2) enter an order approving the proposed settlement and withdrawing the Proof of Claims 13, 14, and 15 identified herein; and (5) grant such other and further relief as this Court deems proper and appropriate.

Dated: April 15th, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee R. Benton / Apr 15", is written over a horizontal line.

Lee R. Benton (ASB 8421-E63L)
Attorney for Newcomb, Nouveau Solutions,
LLC and West Alabama Emergency
Physicians, P.C.

OF COUNSEL:
BENTON & CENTENO, LLP
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Phone: 205-278-8000
Email: lbenton@bcattys.com

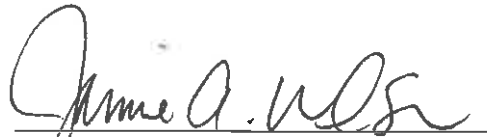
CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM-ECF system, which will send notification of such filing to the CREDITOR MATRIX (attached) and all parties requesting electronic service as follows:

Eric M. Wilson, Attorney for Beem
1902 8th Street
Tuscaloosa, Alabama 35041

Randal S. Ford, Attorney for Beem
P.O. Box 20468
Tuscaloosa, Alabama 35402-0468

C. David Cottingham
Chapter 13 Trustee
701 22nd Avenue, Suite 4
P.O. Drawer 020588
Tuscaloosa, Alabama 35402



Of Counsel

MEDIATED SETTLEMENT AGREEMENT

April 9, 2015

This Agreement is by and between John Newcomb, M.D. ("Newcomb"), West Alabama Emergency Physicians, P.C. ("WAEP"), Nouveau Solutions, LLC ("Nouveau"), and Derek Beem ("Beem").

WHEREAS, the parties did agree to consensually mediate certain disputed issues arising out of the business operations of Nouveau and/or WAEP, and/or their prior relationships, and,

WHEREAS, said mediation occurred on April 9, 2015 with Daniel D. Sparks serving as mediator, and,

WHEREAS, the parties have reached a resolution of certain disputes which they hereby reduce to writing,

NOW, THEREFORE, it is AGREED as follows:

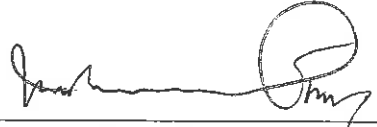
1. Beem shall pay the single sum of \$5,000.00 to Newcomb, payable without interest, and due on the date which is six months after Beem receives his discharge in the pending Chapter 13 Case number 14-71833-JHH-13, or within six months of the date when said bankruptcy case is dismissed, whichever shall first occur. Beem shall further on demand relinquish all right, title and interest in and to Nouveau to Newcomb and/or shall consent to the dissolution of Nouveau, whichever Newcomb may at any time direct. This Mediated Settlement Agreement shall be contingent upon bankruptcy court approval. Neither WAEP nor Nouveau nor Newcomb will seek to add or cause Beem to be added as a party to any civil action.

2. Newcomb shall initiate no phone calls, e-mails, texts, or correspondence to Beem regarding or related to collection of said \$5,000.00 sum as set forth in paragraph 1 above. Should Newcomb desire to make contact with Beem, he shall do so only through Beem's attorney, Randall Ford.

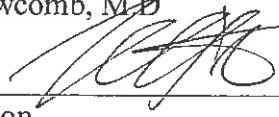
3. In the event of bankruptcy court approval of the terms of this Mediated Settlement Agreement, and the payments and transfers contemplated thereby then each of the parties hereto shall exchange mutual releases. Said mutual releases shall be general releases of all claims, liabilities, contracts, obligations, disputes, or disagreements of any kind, past, present, or future, known or unknown, each to the other, the sole exception being the covenants and agreements arising out of this Mediated Settlement Agreement. In such event, Beem shall dismiss with prejudice any and all pending causes of action against any of the parties, and specifically any pending cause of action against Newcomb or West Alabama Family Physicians, PC.

EXHIBIT A

4. To memorialize Beem's acquiescence to this Mediated Settlement Agreement, he has signed the attached handwritten Exhibit A.



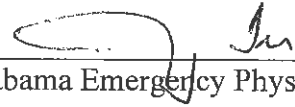
John Newcomb, M.D.



Lee Benton
Attorney for John Newcomb, M.D.

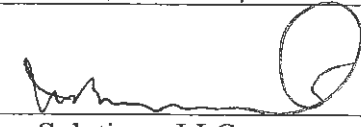
/ See Exhibit A for Signature /
Derek Beem

/ See Exhibit A for Signature /
Randal S. Ford,
Attorney for Derek Beem

x 

West Alabama Emergency Physicians, P.C.

By: Jimmy Tu
Its President

x 

Nouveau Solutions, LLC
By: John Newcomb
Its Managing Partner

Exhibit A.

\$5000 w/ no interest payable w/in 6 months
after Been receives a discharge in bankruptcy or when
the bankruptcy case is dismissed subject to approval
by the bankruptcy court

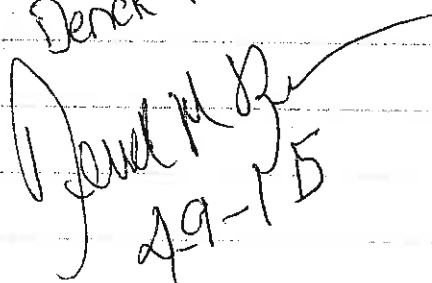
Randal Ford

Only contact Been through his attorney. No
phone calls, emails, texts, or letters, etc about the
payment in any way, shape or form.

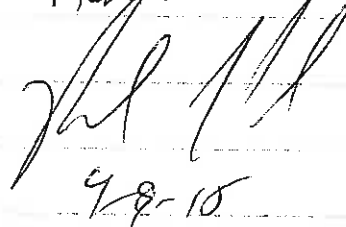
Been relinquishes all right, title and interest in
NS and transfers all his shares to John Newcombs.
NS and Been release each other from all liabilities,
contracts, agreements and any and all obligations, one
unto the other. Or dissolve it

Neither WAEP & NS nor Newcombs or Tu will add, or
cause to be added, Been to the current case
7:13-cv-1538-SLB (the false Claims Act case)

Derek A. Been


4-9-15

Randal S Ford


4-8-15

Label Matrix for local noticing
1126-7
Case 14-71833-JHH13
NORTHERN DISTRICT OF ALABAMA
Tuscaloosa
Wed Apr 15 09:27:49 CDT 2015

U. S. Bankruptcy Court
2005 University Blvd., Room 2300
Tuscaloosa, AL 35401-1546

Alabama Power
915 Queen City Avenue
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C/O Donald J Sides General Counsel
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Decatur, AL 35602-0669

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c/o Dishcuk & LaCoste
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C/O Rauch-Milliken International Inc
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Airgas South Inc
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City of Industry, CA 91716-0599

Chase Mortgage
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Philadelphia, PA 19101-7346

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Tuscaloosa, AL 35405-3202

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Monroe LA 71203-4774

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Oklahoma City, OK 73127-5822

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Tuscaloosa, AL 35401-1599

Peyton C. Cochrane, Tax Collector
714 Greensboro Ave, Room 124
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Tinco
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Tuscaloosa, AL 35405-5581

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Tuscaloosa, AL 35401

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Moody, AL 35004-0430

Weatherford Office Supply
400 20th Ave
Tuscaloosa, AL 35401-1536

Wells Fargo Bank
PO Box 5058 MAC P6053-021
Portland, OR 97208-5058

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Yellow Book
6300 C Street
Cedar Rapids, IA 52404-7470

Yellow Book
C/O David Chip Schwartz
PO Box 11366
Birmingham, AL 35202-1366

C David Cottingham
Chapter 13 Standing Trustee
701 22nd Avenue, Suite 4
P O Drawer 020588
Tuscaloosa, AL 35402-0588

Derick Morring Beem
708 Haymarket Lane
Tuscaloosa, AL 35405-9743

Eric M Wilson
The Law Firm of Eric M. Wilson, LLC
1902 8th Street
Tuscaloosa, AL 35401-2128

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Portfolio Recovery Associates, LLC
POB 41067
Norfolk VA 23541

End of Label Matrix	
Mailable recipients	71
Bypassed recipients	0
Total	71